

“under paragraph (b) or (c) of this section”, were suspended; and in paragraph (e) introductory text, the words “and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested” were suspended, effective Aug. 1, 1997, through July 31, 1999.

§ 1126.8 Nonpool plant.

Nonpool plant means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *Other order plant* means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) *Partially regulated distributing plant* means a nonpool plant that is not an other order plant, a governmental agency plant, or a producer-handler plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) *Unregulated supply plant* means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is not an other order plant, a governmental agency plant, or a producer-handler plant.

(e) *Governmental agency plant* means a plant operated by a governmental agency from which fluid milk products are distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1126.9 Handler.

Handler means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of a producer that is diverted for the account of the coopera-

tive association from a pool plant of another handler in accordance with § 1126.13;

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer for delivery to a pool plant of another handler in a tank truck owned and operated by, or under the control of, such cooperative association, unless both the cooperative association and the operator of the pool plant notify the market administrator prior to the time that such milk is delivered to the pool plant that the plant operator will be the handler for such milk and will purchase such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the cooperative association at the location of the pool plant to which such milk is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) Any person who is a producer-handler; and

(f) Any person in his capacity as the operator of an other order plant described in § 1126.7(f).

§ 1126.10 Producer-handler.

Producer-handler means any person:

(a) Who operates a dairy farm and a processing plant from which there is route disposition in the marketing area;

(b) Who receives no fluid milk products from sources other than his own farm production and pool plants;

(c) Whose receipts of fluid milk products (including such products which he obtains at a location other than his processing plant for distribution on his routes) during the month from pool plants do not exceed the lesser of 5 percent of his Class I disposition during the month or 10,000 pounds;

(d) Who disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from his own farm production or pool plants; and

(e) Who provides proof satisfactory to the market administrator that the care and management of the dairy farm and other resources necessary for his own farm production of milk and the management and operation of the processing plant are the personal enterprise and risk of such person.

[40 FR 23438, May 30, 1975, as amended at 44 FR 5868, Jan. 30, 1979]

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for disposition in the marketing area as Grade A milk and whose milk is:

(1) Received at a pool plant directly from such person;

(2) Received by a handler described in § 1126.9(c); or

(3) Diverted from a pool plant in accordance with § 1126.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) A governmental agency that operates a plant exempt pursuant to § 1126.8(e);

(3) Any person with respect to milk produced by him that is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1126.44(a)(8)(iii) and the corresponding step of § 1126.44(b);

(4) Any person with respect to milk produced by him that is reported as diverted to an other order plant if any portion of such person's milk so moved is assigned to Class I under the provisions of such other order; or

(5) Any person with respect to milk produced by him during the months of February through July that is caused to be delivered to a pool plant by a cooperative association or a pool plant operator if during any of the immediately preceding months of September through November more than one-third of the milk from the same farm was caused by such cooperative association or pool plant operator to be delivered

to plants as other than producer milk (except milk that is not producer milk as a result of a temporary loss of grade A approval or the application of § 1126.13(e) (4) and (5)), unless such pool plant was a nonpool plant during any of such immediately preceding months.

[40 FR 23438, May 30, 1975, as amended at 43 FR 44825, Sept. 29, 1978]

EFFECTIVE DATE NOTE: At 59 FR 26737, May 24, 1994, § 1126.12 paragraph (b)(5) was suspended effective May 24, 1994.

§ 1126.13 Producer milk.

Producer milk means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer by the operator of the plant;

(b) Received by a handler described in § 1126.9(c);

(c) Picked up from the producer's farm tank in a tank truck owned and operated by, or under the control of, the operator of a pool plant but which is not received at a plant until the following month. Such milk shall be considered as having been received by the handler during the month in which it is picked up at the producer's farm and shall be priced at the location of the plant where it is physically received in the following month. This paragraph shall apply in like manner to milk received by the operator of a pool plant who, in accordance with § 1126.9(c), is the handler for such milk;

(d) Diverted from a pool plant described in § 1126.7(a) for the account of the handler operating such plant to another pool plant, except that milk diverted to a plant operated by a cooperative association may not be milk of the cooperative association's members. Milk so diverted shall be priced at the plant to which diverted; or

(e) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the handler operating such pool plant or a handler described in § 1126.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion during any month unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status